IN THE HIGH COURT OF BOMBAY AT GOA
***

WRIT PETITION NO. 293 OF 2003

The Mazania of the
Temple of Shri Mahalsa
of Mardol, Mardol, Goa ...Petitioner

Versus

Smt. Mandakini Krishni
Mardolkar, major of age,
r/o Mardol, Ponda, Gopa. ...Respondent.

Shri R. G. Ramani, advocate for the petitioner.

Shri U. S. Kolwalkar, advocate for the respondent.

CORAM : F. I. REBELLO, J.

DATE : 17th July, 2003.

ORAL JUDGMENT

Rule. Respondent waives service.

Application for amendment has been rejected. However, impleading of party has been allowed. Rejection of amendment is the subject-matter of the present Writ Petition.

2. By the amendment the petitioner contended that encroachment was made in the year 1997. The petitioner was seeking to implead in the suit the balance area encroached. That application was rejected on the ground that it is barred by limitation. The suit was filed in the year 1997. The application is of 21st August, 2002. Prima facie there would be no bar of limitation. Even otherwise, this would be a mixed question of fact and law which could be decided only on evidence being led. In these circumstances, the trial Court failed to exercise jurisdiction vested in it in law.

In the light of that the impugned Order dated lst February, 2003, to the extent it has disallowed the application for amendment, is set aside. Rule made absolute in terms of prayer clause (a). No order as to costs.

F. I. REBELLO, J.

mc.